IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 191 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAMJI KHIMJI AHIR

Versus

STATE OF GUJARAT

Appearance:

MR AJMAL G SOLANKI for Petitioner

MS MANISHA LAVKUMAR, AGP for Respondents.

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 19/04/2001

ORAL JUDGEMENT

Rule. Service of rule is waived by Ms. Manisha Lavkumar, Ld. AGP for the respondents.

2. This petition is filed by a councillor of Gandhidham Municipality in Kutch district. The petition

was filed on 8/1/2001 with the following prayers :-

(I) to direct the State of Gujarat, Regional Director of Municipalities, Rajkot and Collector, Kutch to appoint permanent Chief Officer or hand over the charge of Chief Officer to the officer of the Revenue Department of Government,

(II) to direct the respondents to conduct inquiry in the matter of financial transaction made by Mr. Vinod Parikh on behalf of Municipality during his charge period.

3. As far as the first prayer is concerned, Ms. Manisha Lavkumar, Ld. AGP produces on record a copy of the notification dated 4/2/2001 issued by the State Government appointing Mr. S.A. Jiva as Chief Officer of the Gandhidham Municipality. The Ld. AGP states that the appointment is made on regular basis and not on temporary or ad-hoc basis. Hence, it is submitted that the grievance of the petitioner does not survive.

4. Mr. Solanki, learned advocate for the petitioner, however, submits that before filing of the petition whenever there was any temporary vacancy in the post of Chief Officer, Gandhidham Municipality, the additional charge was being given to Mr. Vinod Ramniklal Parikh, the internal auditor of Gandhidham Municipality and that even when the present Chief Officer Mr. S.A. Jiva was on leave in March/April 2001, again Mr. Vinod Ramniklal Parikh was given additional charge of the post of Chief Officer. Certain allegations are made against Mr. Vinod Ramniklal Parikh. For the present it is not necessary to make reference to the said allegations. The learned counsel for the petitioner relied upon Rule 4(6) of the Gujarat State Municipality Chief Officer's Service (Recruitment, Absorption and Conditions of Service) Rules, 1995, which reads as under :-

"In this rule notwithstanding anything contain hereinabove whenever any post is lying vacant due to non availability of qualified candidate either by direct recruitment or promotion or when any person is on leave or any post temporarily falls vacant, such post shall be filled by appointment of appropriate officer from the revenue department or Government."

5. It is, therefore, clear that without going into any other question, it is required to be directed that whenever there is vacancy in the post of Chief Officer in the Gandhidham Municipality or whenever the regular incumbent proceeds on leave or for any other reason the post falls vacant, the post of Chief Officer shall be filled in by appointment of appropriate officer from the Revenue Department of the Government.

6. Coming to the second prayer, the Court does not propose to go into the allegations made against Mr. Vinod Ramniklal Parikh only on the ground that the said person is not joined as a party in the present petition. It will be open to the petitioner or any other appropriate person to make a representation to the State Government or the Director of Municipalities, Gujarat State for inquiring into the conduct of Mr. Vinod Ramniklal Parikh in respect of the period when said Mr. Parikh was holding charge/additional charge of the post of Chief Officer, Gandhidham Municipality. It is clarified that this Court has not gone into the merits of this allegation. The only reason which prompts the Court in granting the aforesaid liberty to the petitioner is the fact that when a person holds charge of both the posts i.e. Chief Officer of the Municipality as well as the Internal Auditor in the Municipality, it will be difficult for a public body like the Municipality to find out whether an irregularity was committed by the officer holding both the posts at the same time. It is again clarified that the Court has not gone into the question whether the allegation made against Mr. Vinod Ramniklal Parikh has any substance or not. It is open for the petitioner to approach competent authority with a request to look into such allegations.

7. The petition is accordingly disposed of in terms of aforesaid direction in para. 5 hereinabove and the observations in para. 6 hereinabove. Rule is made absolute to the aforesaid extent only with no order as to costs.

Direct service is permitted.

[M.S. SHAH, J.]

* Pansala.